



September 16, 2010

VIA ECFS

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

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Re: WC Docket No. 07-135

Dear Ms. Dortch:

Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone (“Kentucky Telephone”) hereby replies to the *Ex Partes* filed in the above-captioned docket by CTIA – the Wireless Association on August 26, 2010 and USTelecom on August 31, 2010 (the “*USTelecom Ex Parte*”). These groups, dominated by the nation’s largest telecommunications carriers, again urge the commission to adopt new rules and add another regulatory overlay to the intercarrier compensation regime to address a “problem” that neither association can or will quantify.¹ The *USTelecom Ex Parte*, for example, calls upon the Commission to adopted proposed rules that it contends will address the “egregious practice of traffic pumping.” *USTelecom Ex Parte* at 1. In reality, the actions urged by CTIA and USTelecom are but the latest efforts to avoid paying for the work performed by small Competitive LECs, such as Kentucky Telephone, in terminating their customers’ traffic and, as explained in more detail below, will have significant unintended consequences. Accordingly, to the extent that the Commission considers adopting rules in this docket, it should set forth the proposed rules in a Further Notice of Proposed Rulemaking and

¹ CTIA points only to the unsubstantiated claims from a “study” conducted by a wireless industry consultant, Connectiv Solutions, addressing the purported costs to the wireless industry that is devoid of any analysis to support this raw assertion. *See CTIA Ex Parte*, Attachment at 6. Notably, the study does not address in any manner the *revenues* received by the wireless industry as a result of the services enjoyed by their customers. Indeed, a summary of the study erroneously concludes that “Wireless Service Provider cannot pass the variable usage fees to its end users due to commonly used unlimited domestic long distance plans,” when, the reality is, many wireless customers do not have unlimited plans. *See* <http://www.connectiv-solutions.com/traffic-pumping.html>. In any event, the existing access charge regime existed long before long-distance carriers adopted calling plans that desensitize consumers to their consumption of long distance calls. The fact that IXC’s have chosen pricing schemes that ignore the regulations governing the market in which they operate provides no support for their position that the Commission must impose new regulations.

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for all enforce its long-standing rules prohibiting carriers from exercising self-help by refusing to pay as means of challenging another carrier's rates.

USTelecom's proposed rules would make it an "unjust and unreasonable practice for any LEC to assess intercarrier compensation . . . on traffic that is subject to a revenue sharing arrangement." The proposed rules would define revenue sharing to include a situation where "the arrangement can be expected over its term to produce net payments from the LEC to the calling provider." USTelecom wants the FCC to regulate one kind of revenue sharing — sharing of *access* revenues — but continue to allow USTelecom's members to share revenue associated with any other kind of telecommunications revenue. Aside from preserving the millions of dollars in revenue that USTelecom and CTIA members derive from revenue sharing deals with their customers and others, the proposed rules would interfere with a number of commercially-negotiated agreements where IXC's are paying negotiated rates associated with the calls their subscribers make to free calling services and other innovative collaboration services. Rather than creating yet another category of telecommunications traffic and moving further away from the goal of a unified intercarrier compensation regime, the Commission should allow the market forces to continue to play out. The Commission should decline USTelecom and CTIA's respective invitations to manipulate the existing regulatory system to their advantage.

I. REVENUE SHARING IS A COMMON OCCURRENCE IN THE TELECOMMUNICATIONS INDUSTRY – THE COMMISSION SHOULD NOT SINGLE OUT ONE ARRANGEMENT FOR REGULATION

The telecommunications market in the United States relies heavily on revenue sharing, despite USTelecom and CTIA's efforts to suggest that such arrangements are somehow anomalous or illegal. Virtually all, if not all, IXC's, wireless carriers, and LEC's engage in some form of revenue sharing.² The Commission has even encouraged revenue sharing agreements

² *In re: Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993*, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, 24 FCC Rcd. 6185, 6249, ¶ 124 ("The mobile search advertising market is one promising source of ad revenue. Although this market is currently still small, with only an estimated \$244 million in spending expected in 2008, wireless providers and Internet companies expect the market to grow rapidly in the future. Wireless service providers will split revenue with other parties from ads that come up in response to the keywords subscribers use to conduct searches. For example, it is reported that Sprint Nextel recently entered into a deal with Google under which Sprint Nextel added Google as the default Web search bar on browsers in more than 40 of its handsets, and as part of that deal Sprint Nextel shares revenue from ads Google displays in response to searches.").

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with regard to Internet Service Providers³ and has long been aware, for example, that internet search providers and mobile phone companies have revenue sharing arrangements. In the context of SMS messaging campaigns, carriers often share between 60 – 80% of revenues with their customers, including shows like American Idol.⁴ Nevertheless, the rules proposed by USTelecom and the IXC focus, unsurprisingly, only on a single type of revenue sharing – revenue sharing of access charges.

But, the proposals urged by CTIA and USTelecom will have significant and negative consequences for the telecommunications industry and hinder the ability of competitive carriers to grow and innovate. Indeed, when the Iowa Utilities Board recently considered adopting a similar ban on access revenue sharing, the nation's largest CLECs cited the negative impacts that such a ban would have on the telecommunications industry and, in particular, competitive carriers. For example, McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC provided the following comments:

'Revenue sharing' is a common business practice in telecommunications and other industries, and in and of itself, is not the root cause of the problem. IXCs themselves have been known to share end user revenue with marketing agents, sometimes only retaining a token fee as the service provider; international carriers share settlement revenue to increase traffic on their networks; payphone providers share revenue with premise owners; operator service providers pay commissions to traffic aggregators. Wireless carriers have been known to share revenue with various business partners (e.g., handset equipment vendors). The reality is that every volume discount offered by an IXC or LEC to an end user is a form [of] revenue sharing 'paid' by the carrier to the customer for increasing the volume of traffic (i.e., stimulating traffic) on that carrier's network.

³ *In re: Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, CC Docket No. 02-33, 20 FCC Rcd. 14853, 14900, ¶ 88 (Sep. 23, 2005) ("For example, ISPs and facilities-based carriers could experiment with revenue-sharing arrangements or other types of compensation-based arrangements keyed to the ISPs' marketplace performance, enabling the ISPs to avoid a fixed monthly recurring charge (as is typical with tariffed offerings) for their transmission needs during start-up periods.").

⁴ See *Premium SMS in the United States* at 5, available at <http://www.gerbsmanpartners.com/premiumsmswp.pdf> ("Carriers across the board support the Premium model and intend to keep 20% – 40% of the incoming revenue, sharing the rest with the content or service provider.")

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. . . targeting only switched access ‘revenue sharing’ is arbitrary when other forms of revenue sharing that incent end users to move their telecommunications traffic to another carrier would presumably continue to remain lawful.

* * *

The Board proposal also fails to recognize that there are some types of business customers that, due to the nature of their business, legitimately involve very large volumes of toll traffic. For example, Cedar Rapids is home to a significant call center that handles larger volumes of inbound 800 traffic. The call center partners with large businesses to respond to customer telephone inquiries about products or services. Likewise, insurance companies have calls centers in various locations in Iowa. The monthly recurring revenue charges for local services to a call center are in many instances relatively insignificant in comparison to the amount of inbound toll traffic generated to such call centers. However, that does not mean that the call center is not a legitimate local exchange customer. A LEC should not be prohibited from using all of the tools in its marketing arsenal to win the entire book of telecommunications business of that call center and have that toll (as well as local) traffic on its network. Otherwise, any existing call center could be forever bound to take local service from an ILEC if a net payor test is imposed.⁵

XO Communications Services, Inc., another competitive carrier, put it this way:

. . . Many companies engage in legitimate arrangements, such as commission programs and discounts for volume usage, some of which may be directly or indirectly dependant on the revenue generated by that customer. These arrangements are not inherently unreasonable or unlawful; they merely encourage customers to market their services and increase usage. The Board, therefore, should not broadly prohibit such arrangement[s] or restrict the

⁵ *In re: High Volume Access Services*, Docket No. RMU-2009-0009 (IUB Feb. 2, 2010), Comments of McLeodUSA Telecommunications Services, Inc. d/b/a PAETEC Business Services in Response to Order Allowing Additional Comments.

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assessment of intrastate access charges on traffic subject to a revenue-sharing or other arrangement.⁶

Furthermore, when the Commission adopted the existing access charge rules in 2001, it considered and rejected the same arguments that CTIA and USTelecom continue to pedal almost a decade later.⁷ The Commission has previously considered the various costs and benefits flowing from revenue-sharing arrangements and appropriately concluded that such arrangements are perfectly reasonable, particularly in situations where the revenue is being shared with a party that is not itself initiating the calls.⁸ As point in fact, only a few years ago in the context of 8YY revenue-sharing arrangements, the Commission correctly concluded:

As the IXC contend, some competitive LECs may have agreed to share with some customers generating a high volume of 8YY traffic a portion of the access revenues that it receives in connection with the traffic. We are not persuaded, however, that the existence of these arrangements necessarily leads to the problems that the IXC commenters attribute to them. Specifically, we are not convinced that the commission arrangements that competitive LECs may have entered into with 8YY generators necessarily affect the level of traffic that these customers, typically universities and hotels, generate. ***The IXCs have failed to demonstrate that commission payments to 8YY generators such as universities or hotels translate effectively into incentives for the individuals who actually use those facilities to place excessive or fraudulent 8YY calls. The commission payments challenged by the IXCs go to the hotel or university itself, not to the students or hotel guests*** who place the bulk of the 8YY calls from these institutions. Accordingly, it does not appear that these commissions create any incentive for those actually placing the calls artificially to inflate their 8YY traffic. Rather, as the competitive LECs contend, the primary effect of the commission payments appears to be to create a financial incentive for the

⁶ *In re: High Volume Access Services*, Docket No. RMU-2009-0009 (IUB Feb. 1, 2010), Comments of XO Communications Services, Inc.

⁷ *Access Charge Reform*, CC Docket No. 96-262, Seventh Report and Order, 16 FCC Rcd. 9923, ¶¶ 71-73 (2001).

⁸ *In re: Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, CC Docket No. 96-262, 19 FCC Rcd. 9108, 9142-43, ¶¶ 70-71 (May 18, 2004) (citations omitted).

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institutions to switch from the incumbent to a competitive service provider.

Furthermore, even if we were persuaded that there was an incentive for 8YY traffic generation, the fact that competitive LEC access rates are now subject to the declining benchmark should eliminate any harm to IXC's from this traffic. As the competitive LECs point out, moving access rates for 8YY traffic to the benchmark rates already denies them much of the revenue with which they might otherwise pay commissions to 8YY generators. Accordingly, we question whether this practice has continued to a significant extent. Moreover, ***because access rates for 8YY traffic must be at or below the benchmark, inflated minutes of 8YY traffic would appear to benefit rather than burden IXC's.***⁹

Despite their name-calling campaign and references to "pumped" traffic it is undisputed that the IXC's customers dial the telephone and originate each and every one of the calls that they purport to be "pumped" without any pressure or influence created by the revenue-sharing arrangement. If those services were provided in the absence of a revenue-sharing agreement, consumers would continue to find the ability to host a conference call by having participants dial long distance more beneficial than paying to host the call through a toll free number. In short, the consumer's incentive to participate in these conference calls is not influenced by the compensation exchanged between carriers or the revenue sharing relationship between the LECs and the calling service providers.

Revenue sharing is a common practice in the industry and it is an important tool for competitive carriers to attract and retain new high volume clients. For these reasons, the Commission should decline to arbitrarily target "access revenue" as compared to regulating revenue sharing more broadly. The Commission should decline the IXC's request to implement rules prohibiting access revenue sharing arrangements, which would serve only to protect the nation's largest carriers. The unintended consequences of such a prohibition would stymie competition in the local phone market and provide an undue advantage to incumbent carriers.

⁹ *In re: Access Charge Reform*, Eighth Report and Order and Fifth Order on Reconsideration, CC Docket No. 96-262, 19 FCC Rcd. 9108, 9142-43, ¶¶ 70-71 (May 18, 2004) (citations omitted).

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II. THE COMMISSION SHOULD ALLOW THE MARKET FORCES TO PLAY OUT

Kentucky Telephone also respectfully urges the Commission to refrain from interrupting the market forces that are currently at play. Generally with the exception of Qwest and Sprint, many IXCs have finally agreed to pay for the traffic originated by their subscribers. It would be detrimental to the market for the Commission to step in at this time with a heavy regulatory hand in order to end a service that is clearly well received by countless consumers and profitable for IXCs, LECs, and call providers alike.¹⁰

Adopting interim rules would serve only to further fragment the existing Byzantine intercarrier compensation regime and move the industry further from, not closer to, the Commission's long-term goal of having a unified intercarrier compensation regime.¹¹ As the table below demonstrates, the intercarrier compensation regime is already extremely fragmented, giving rise to industry uncertainty, as well voluminous and costly litigation.¹² The Commission has long recognized that the costs for terminating telecommunications traffic are the same, regardless of the type of traffic at issue.¹³ Creating yet another category of traffic makes no

¹⁰ In this regard, despite many requests for information and opportunities to do so, no IXC has produced information to support the various claims that free calling services result in a loss for the IXCs delivering the traffic. Indeed, on each occasion of which Kentucky Telephone is aware, the IXCs have gone to great lengths to avoid discovery into this reasonable area of inquiry.

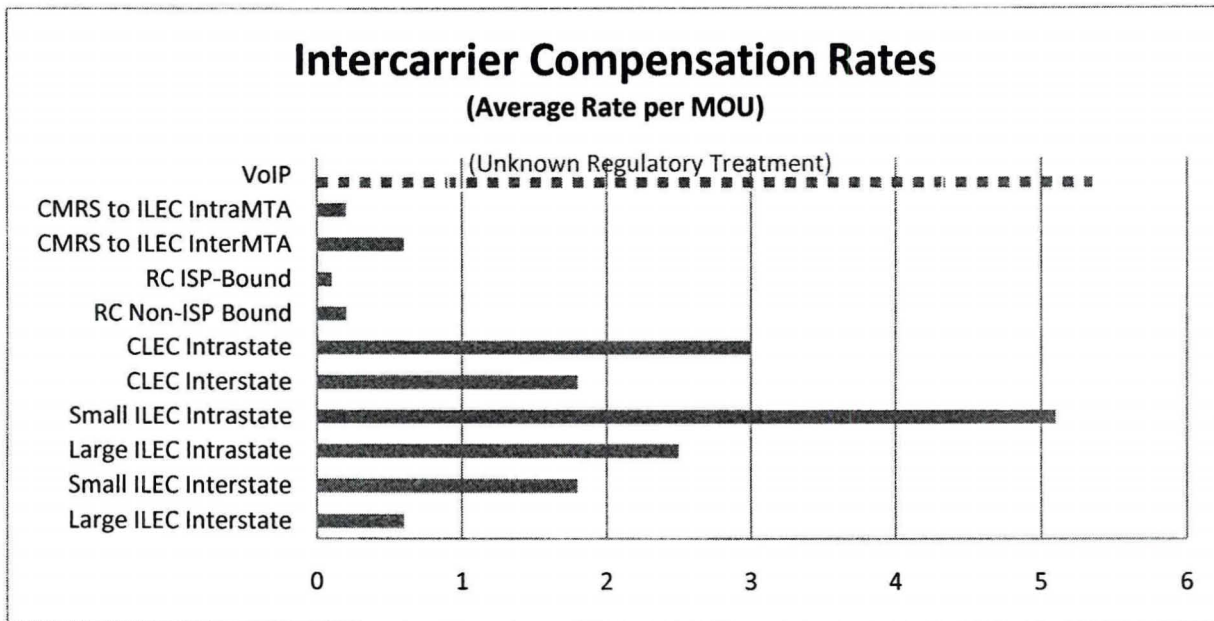
¹¹ See, e.g., Connecting America: National Broadband Plan, Recommendation 8.7 at 148.

¹² Consider, for example, the litigation that has existed during the past many years over the appropriate compensation for ISP-bound traffic, which has now made its way to the Supreme Court. See *Core Communications, Inc. v. Federal Communications Commission, et al.*, Case No. 10-185 (petition for writ of certiorari filed on August 6, 2010).

¹³ See, e.g., *In re Access Charge Reform Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 96-262, 11 FCC Rcd. 21354, ¶ 9 (1996) ("1996 Local Competition Order") ("[T]ransport and termination of traffic . . . involves the same network function [and] the rates . . . for transport and termination of local traffic and . . . long distance traffic should converge."); *In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, 16 FCC Rcd. 9151, ¶ 89 (2001) ("2001 ISP Remand Order") (A "[local exchange carrier] generally will incur the same costs when delivering a call to a local end user as it does delivering a call to an ISP." The "record developed in response to the Intercarrier Compensation NPRM . . . fail[ed] to establish any inherent differences between the costs on any one network of delivering a voice call to a local end-user and a data call to an ISP."); see also *In re Establishing Just and Reasonable Rates for Local*

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sense, particularly at this stage. Accordingly, the Commission should decline USTA's and CTIA's proposal to add yet another bar to the chart below.



To the extent that the Commission is inclined to adopt new rules, however, rather than prohibiting access-revenue sharing, it should adopt a benchmark rate for traffic destined to conference call and similar service providers that compensates carriers for the work they perform. Based on an examination of current market forces, Kentucky Telephone believes that the Commission could identify a rate that compensates CLECs for the work they perform and that would be suitable to all parties.¹⁴ This would be the better interim course as it avoids any

Exchange Carriers, WC Docket No. 07-135, Qwest Ex Parte, at 2 (September 24, 2008) (urging intercarrier compensation reform because “As Qwest and other carriers have detailed at length in the Commission’s ICC docket, these problems arise largely from the application of vastly disparate rates to **identical services** based on **meaningless distinctions**.”) (emphasis added).

¹⁴ Qwest, among others, has previously supported this approach. *See, e.g., In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Qwest Ex Parte (April 25, 2008) (“The access stimulation problem can be addressed . . . by controlling rates.”).

Moreover, CTIA’s previous proposal to bring the rates for these long-distance calls down to \$0.0007, does not present a just and reasonable rate for Competitive Local Exchange Carriers. *See In re Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, CTIA Ex Parte (Jan. 16, 2008). This rate would be well below the rate that is being set in the market and unnecessarily deprive rural carriers of the resources necessary to allow them to

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harm to the countless small businesses, educational institutions, nonprofits and government agencies that have come to rely upon the competitive conferencing services.

By adopting a benchmark rate for the traffic, the Commission would help to resolve an industry-wide controversy and allow small carriers, such as Kentucky Telephone, to return its attention to provide telecommunications services, rather than to continue expending substantial resources fighting the IXCs for their self help refusal to pay for the use of the LECs' network.

As America continues to struggle to find solid economic footing, now is not the time for the Commission to harm competitive carriers or consumers by hyper-regulating the relationship between LECs and their customers. If the Commission is concerned that increasing volumes of traffic being terminated through rural LECs may cause access rates to become unjust and unreasonable, then it should examine those rates and establish on a prospective basis a new benchmark rate (and, in so doing, make clear that CLECs are entitled to be paid for the work they have already performed when IXCs are billed consistent with the current benchmarks). Otherwise, the Commission should refrain from acting at all until it can generate a comprehensive intercarrier compensation reform proposal.

Sincerely,

A handwritten signature in dark ink, reading "Ross A. Buntrock". The signature is written in a cursive, flowing style.

Ross A. Buntrock

provide competitive services in their rural communities, including enhancing access to broadband.